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 8

9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 D.C. No. OHS-15
 Chapter 9

**CITY'S REQUEST FOR JUDICIAL
 NOTICE IN SUPPORT OF CITY'S
 SUPPLEMENTAL REPLY BRIEF IN
 SUPPORT OF CONFIRMATION OF
 THE FIRST AMENDED PLAN OF
 ADJUSTMENT, AS MODIFIED
 (AUGUST 8, 2014)**

Date: October 1, 2014
 Time: 10:00 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

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1 Pursuant to Rule 201 of the Federal Rules of Evidence, the City of Stockton (the “City”)
 2 respectfully requests that the Court take judicial notice of the document attached as Exhibit A,
 3 excerpts from the certified September 3, 2014, 8:30 a.m. transcript of the Detroit confirmation
 4 hearing, *In re City of Detroit Michigan*, Case. No. 13-53846 (SWR) (Bankr. E.D. Mich.).¹

5 The timing of this request is proper. Under Rule 201(d), “[t]he court may take judicial
 6 notice at any stage of the proceeding.” Fed. R. Evid. 201(d); *In re Int’l Bldg. Components*, 159
 7 B.R. 173, 180 (Bankr. W.D. Pa. 1993) (“In a non-jury trial, judicial notice may be taken at any
 8 time prior to the decision”) (citation omitted).

9 Further, Exhibit A, an oral argument transcript, is properly subject to judicial notice
 10 because its contents “can be accurately and readily determined from sources whose accuracy
 11 cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2); *Engine Mfrs. Ass’n v. S. Coast Air*
 12 *Quality Mgmt. Dist.*, 498 F.3d 1031, 1039 n.2 (9th Cir. 2007) (granting a request for judicial
 13 notice of an oral argument transcript); *Elder-Evins v. Casey*, No. C 09-06776 SBA LB, 2012 WL
 14 2577589, at *4 (N.D. Cal. July 3, 2012) (“[C]ourts regularly take judicial notice, under Rule 201,
 15 of . . . oral argument transcripts from other courts [because they meet the requirement of Fed. R.
 16 Evid. 201(b)(2)].”) (citations omitted). According to the docket in the Detroit matter, “the
 17 transcript may be viewed at the Clerk’s Office by parties who do not receive electronic notice and
 18 participated in the proceeding,” and is available for purchase from a court transcriber whose
 19 contact information is listed in the docket. *In re City of Detroit, Michigan*, Dkt. No. 7345. The
 20 City requests that the Court take judicial notice of the fact that the transcript contains certain
 21 statements cited in the Reply, concurrently filed.

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 27 ¹ The City has attached only the pages cited in the City’s Supplemental Reply Brief In Support Of Confirmation Of
 28 The First Amended Plan Of Adjustment, As Modified (August 8, 2014) (“**Reply**”) along with surrounding pages for
 context as necessary.

Exhibit A

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF, Case No. 13-53846
Detroit, Michigan
CITY OF DETROIT, MI September 3, 2014
_____/ 8:30 a.m.

IN RE: TRIAL
BEFORE THE HONORABLE STEVEN W. RHODES
TRANSCRIPT ORDERED BY: ROBIN WYSOCKI

APPEARANCES:

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PRESENT: KEITH LERMINIAUX, ESQ.

Court Recorder: Kristel Trionfi
LaShonda Moss

Transcriber: Deborah L. Kremlick

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

1 (Court in Session)

2 THE CLERK: All rise. Court is in session. Please
3 be seated. Calling case number 13-53846, City of Detroit,
4 Michigan.

5 THE COURT: Good morning. I think rather than take
6 the time to take appearances, we'll just assume everyone's
7 here. Raise your hand if you're not here. Mr. Bennett.

8 MR. BENNETT: Thank you, Your Honor. Bruce Bennett
9 of Jones, Day on behalf of the City of Detroit.

10 Where we left off yesterday we were discussing the best
11 interest test. And in particular whether the city had any
12 ability to raise taxes and thereby generate more revenue as
13 opposed to harm itself by either continuing the downward
14 spiral that the city is already in, or making that situation
15 worse.

16 And then immediately when we left I was talking about the
17 fact that there's a competitive -- in addition to the cases
18 that talk about avoiding downward spirals, and I think
19 necessarily by the need to address downward spirals, there is
20 a competitive dimension that a municipality has to worry about
21 and that the Court has to worry about for a city that's in a
22 challenging position relative to its tax rates being charged
23 to residents and the services that are -- that it's providing.
24 That's just reality.

25 And as a result of these what I'll call facts on the

1 ground, or the here and now, as opposed to projections and
2 speculations and the so-called dismissal analysis. The city's
3 debt can demonstrate, and I think will demonstrate quite
4 easily during the trial but it also, I'd point out, has
5 demonstrated as a result of the facts found at the eligibility
6 hearing a little bit more than a year ago, or excuse me, a
7 little less than a year ago, that the city -- that the city
8 does satisfy the best interest test even though it's not in a
9 position to raise taxes and doesn't pay taxes.

10 Now there's another dimension to the best interest test.
11 And it's the comparison to alternatives. And the alternative
12 of course in a Chapter 9 case is dismissal.

13 And here again one of my themes is going to be we know an
14 awful lot about what a dismissal scenario is going to look
15 like for the city again, based on facts that have already been
16 found, or facts that we can find by looking around us. And we
17 don't need to guess about the future and project about the
18 future, or gaze into crystal balls to the side that dismissal
19 is not a satisfactory alternative.

20 And again I want to remind the Court that the relevant
21 standard is not whether someone can conjure up -- some
22 creditor can conjure up a particularly rosy scenario for that
23 creditor as to how that creditor might navigate what I will
24 describe as a very disordered orderly process and somehow come
25 out the other end doing better than it would do under the plan

1 and doing better than everyone else. That's not the test in
2 Chapter 9. The test in Chapter 9 for best interest looks at
3 the creditor body as a whole.

4 So one of the things that we established earlier, I don't
5 think it's subject to dispute, is that the city can't raise
6 taxes itself. It's at the limits or very very close to the
7 limits of the taxes it is authorized to levy by the State of
8 Michigan.

9 Only Courts can raise taxes through the application of
10 the Judicature Act and it's only the property tax that can be
11 raised through -- by creditors through exercising that
12 creditor remedy with a Court order.

13 And if the city again, if we succeed in showing, if we
14 haven't shown -- if we -- as we have shown already, that the
15 city is in a downward spiral now. Dismissal followed by
16 increased taxes will only mean that the downward spiral will
17 continue or get worse.

18 And if that's the case, again as the cases demonstrate, I
19 don't think we need to -- to develop a forecast or speculate
20 about it. The city is going to be even less able to generate
21 revenue. It's going to -- it's going to lose more residents.
22 It's going to lose more businesses. It may well have more
23 delinquency problems. And that's going to make the entire
24 situation worse, not only for the residents that are still
25 here, it will make the situation worse for creditors as well.

1 resolved because the case never got far enough. But I think
2 Your Honor heard that there was a good deal of significant
3 issue concerning how -- how collections had been accounted for
4 and allocated to different assessments with respect to bills
5 that hadn't been completely paid.

6 And there is going to be, if that case didn't get
7 resolved, a -- a -- a -- one component of that larger dispute
8 was going to be figuring out exactly how much was collected on
9 account of different assessments and circumstances where bills
10 were partially paid. A nightmare I am glad that we avoided
11 here, but would not be avoided in dismissal.

12 So our conclusion again from facts that we know, from
13 experience here, from things we know about this case and the
14 positions of creditors, not guesses about what they might be,
15 what we saw what they are, whether there is a race to a
16 courthouse or courthouses, or mob scenes at courthouses, there
17 is not going to be a single line where everybody agrees what
18 their rights are and settles for some form of treatment
19 arising out of a pro rata assessment as to which no one
20 expects it will be fully paid and where the allocation scheme
21 where partial payments occur, is not yet clear under the law.

22 That Your Honor, is a mess. And it is a further
23 demonstration that the -- that a dismissal scenario is not
24 good for creditors generally. I will go further to say I
25 don't think dismissal is good for any creditor. But as I

1 indicated before, Chapter 9 very clearly states that the test
2 relates to creditors generally.

3 We will of course have more evidence on dismissal. But
4 again I want to -- want to say that I think that in terms of
5 the record already established in this case, the -- we may
6 well, the city may well have already demonstrated and the
7 facts as they have developed in this case, may already have
8 demonstrated that dismissal is not a satisfactory alternative
9 for this debtor for which out of Court negotiations were
10 impossible or impracticable and as to which judicial machinery
11 that would apply wouldn't help make that more orderly very
12 much.

13 My last point with respect to this section is to return
14 to the FGIC argument that all this might be okay because by
15 creating liens pursuant to the Judicature Act on -- or not
16 liens, I'm sorry, assessments pursuant to the Judicature Act
17 and raising taxes would create such an uncomfortable situation
18 for the city that it would then change its mind and sell DIA
19 assets if it can to one of their preferred bidders as opposed
20 to pursuant to the grand bargain and the DIA settlement.

21 And -- and I would submit to the Court that that is a
22 completely inappropriate argument, it is an improper use of
23 the law, and an objective that this Court shouldn't tolerate
24 and would not change the outcome of the best interest test.

25 There's one more point in the best interest category that

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7 We certify that the foregoing is a correct transcript from the
8 electronic sound recording of the proceedings in the
9 above-entitled matter.

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11 /s/Deborah L. Kremlick, CER-4872Dated: 9-8-14

Kristel Trionfi

12 LaShonda Moss

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